

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SANDRA A. THOMAS,

Plaintiff-Appellant,

v

MICHAEL J. MUSSOG,

Defendant-Appellee.

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UNPUBLISHED

May 8, 2008

No. 278060

Oakland Circuit Court

LC No. 2006-075012-NZ

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order dismissing the case with prejudice following payment of interest by defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant were married in 1997 and divorced in 2002. As part of the judgment of divorce, defendant assigned half of his warrant to purchase stock in ServiceMagic, Inc. (ServiceMagic), to plaintiff. That assignment entitled plaintiff to purchase 25,000 shares of ServiceMagic at a set price at a later date. Neither party notified ServiceMagic of the assignment.

In August 2004, ServiceMagic exercised its right to buy back the warrant due to a pending merger. Defendant sold all 50,000 shares under the warrant and then placed one-half of the proceeds in an account to pay to plaintiff once he learned of her location. Defendant asserts that he tried to reach plaintiff by letter to determine where to forward her proceeds, but was unsuccessful.

Plaintiff learned of the merger in September 2005 and contacted an attorney to determine what had happened to her interest in ServiceMagic. Defendant forwarded plaintiff's half of the proceeds to her attorney shortly thereafter.

Plaintiff continued her lawsuit after receipt of the funds. Plaintiff alleged conversion and statutory conversion that allows for treble damages and attorney fees. When ruling on defendant's motion for summary disposition, the trial court found that defendant did not convert any funds and that the amended conversion statute did not apply so plaintiff was not entitled to treble damages. But the court denied defendant's motion in part on the ground that defendant had to pay interest to plaintiff for the entire time he held the funds, along with statutory interest

from the date of filing the complaint. The trial court dismissed the case with prejudice once all interest was paid.

On appeal, plaintiff challenges that part of the trial court's order granting summary disposition to defendant on her claims of conversion and treble damages.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). A summary disposition motion brought under MCR 2.116(C)(10) is reviewed in the light most favorable to the nonmoving party and tests the factual support of a claim. *Id.* The moving party is entitled to judgment as a matter of law if there is no genuine issue concerning any material fact. *Id.* When reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and other documentary evidence presented. *Helmus v Michigan Dep't of Transportation*, 238 Mich App 250, 252; 604 NW2d 793 (1999). In this case, the trial court appropriately considered documentary evidence submitted by the parties, including letters, copies of the warrant-related documents, and prior court orders.

"Conversion is defined as 'any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.'" *Lawsuit Financial, LLC v Curry*, 261 Mich App 579, 591; 683 NW2d 233 (2004), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). Common-law conversion is an intentional tort where the converter's acts are willful and the dominion over the property was obtained without the owner's consent. *Id.* "The general rule for the measure of damages for conversion is the value of the converted property at the time of conversion." *Ehman v Libralter Plastics, Inc*, 207 Mich App 43, 45; 523 NW2d 639 (1994). Damages also include interest from the date of conversion. *Id.*

Michigan's statutory conversion law prior to June 16, 2005 did not apply to the person who actually converted the property, but rather applied to those who participated in "knowingly buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property." *Campbell v Sullins*, 257 Mich App 179, 191-192; 667 NW2d 887 (2003).

That statutory conversion provision was amended and made applicable to causes of action that arose after June 16, 2005. The amended statute reads as follows:

(1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

(a) Another person's stealing or embezzling property or converting property to the other person's own use,

(b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property know that the property was stolen, embezzled, or converted. [MCL 600.2919a.]

Conversion occurs at the point wrongful dominion is exerted. *Brennan v Edward D Jones & Co*, 245 Mich App 156, 158; 626 NW2d 917 (2001). The discovery rule has been applied to prevent unjust results when a plaintiff would otherwise not be able to bring suit because of the latent nature of the injury or inability to discover the causal connection between the injury and the defendant's action. *Id.*, 157. Additionally, public policies favoring "finality in commercial transactions, protecting a defendant from stale claims, and requiring a plaintiff to diligently pursue his claim outweigh the prejudice to plaintiffs and militate against applying the discovery rule in the context of commercial conversion cases." *Id.*, 160.

In this case, defendant assigned one-half of his ServiceMagic warrant to purchase stock to plaintiff in 2002. Accordingly, defendant no longer had an interest in the half that he had assigned. Thus, plaintiff could establish that when defendant exerted control allowing ServiceMaster to buy back all of the stock covered under the warrant, that control was wrongful as to the one-half share that no longer belonged to him. Damages for such common-law conversion would be the value of the warrant at the time of conversion plus interest from that date. *Ehman, supra*, 207 Mich App at 45. That is the amount the trial court awarded plaintiff.

The conversion statute in effect in August 2004 (when the warrant to purchase was terminated) did not provide a remedy in this case because it did not provide for a remedy against the individual who actually converted the property. *Campbell, supra*, 257 Mich App at 191-192.

Plaintiff argues that the amended conversion statute applies to this case because she discovered the conversion in September 2005, after the amended statute's effective date. The discovery rule, however, is not usually applied to commercial conversion cases. See *Brennan, supra*, 245 Mich App at 160. Additionally, the discovery rule is applied in an effort to avoid unjust results. *Id.*, 157-158. The discovery rule need not be applied to the case at bar because plaintiff's receipt of the value of the property plus interest does not lead to an unjust result.

The trial court denied defendant's motion for summary disposition in part, allowed plaintiff to retain the proceeds already paid to her by defendant, and ordered defendant to pay interest from the date of sale to the time funds were paid to plaintiff, and statutory interest from the date the complaint was filed. While the court may have erred in ruling that plaintiff could not establish conversion, the court reached the correct result, and thus reversal is not required. *Netter v Bowman*, 272 Mich App 289, 307-308; 725 NW2d 353 (2003).

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski